IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.12760 of 2001 &
R.S.A. No.2104 of 1999 (O&M)
Date of decision: November 22, 2006

Food Corporation of India.

---Petitioner/Appellant

Vs.

State of Punjab & others.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Rajesh Garg, Advocate
for the petitioner/appellant.

Mr. Amol Rattan Singh, Addl. A.G., Punjab.

Mr. H.S. Dhandi, Advocate
for the respondent No.3.

ORDER:

This order will dispose of Civil Writ Petition No.12760 of 2001 and Regular Second Appeal No.2104 of 1999.

The writ petition challenges levy of house tax by the Municipal Corporation, Amritsar on the ground that the property in question belonged to Government of India and was exempted from tax under Article 285 of the Constitution of India. The petitioner had filed a suit on the same ground which was decreed by the trial Court with recovery of Rs.1,76,848/- with interest @ 6% per annum from the date of institution of the suit till payment, but the decree was set aside by the lower Appellate Court and it was held that the property in question did not belong to the Central Government but to the Food Corporation of India (FCI). The appeal has been

preferred by Food Corporation of India against the said judgment, being R.S.A. No.2104 of 1999.

Case of the petitioner-FCI (plaintiff in the suit) is that it paid certain amount towards house tax under mistake and is entitled to recovery of the said amount with interest. The suit was contested by the Municipal Corporation and main issue between the parties was issue No.2 which is as under:-

> "2. Whether the plaintiff is entitled to the refund of Rs.1,76,848/- paid as house tax to the defendant which was infact exempted under law? OPP."

The finding recorded by the trial Court is as under:-

> "9. In the written statement to the plaint, defendant has denied that the ownership of the godowns vests in Government of India. It has not been specifically pleaded if the plaintiff Corporation is the owner. The denial does not seem categorical and specific. This also seems to be a tacit admission of the plaintiffs version.
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> 10. It is highly unlikely that if the plaintiff Corporation was the real owner of the godowns, it would deny ownership simply to avoid liability for the house-tax because in the case the defendant might lose the huge property in the godowns if claim to their ownership was set up by the Central Government.
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> 11. PW Manohar Singh deposed that the property in dispute is owned by the Govt. of India vide copies of Jamabandi Ex.P1 and khasra Girdawari Ex.P2. In the column of possession in these documents, the Central Government is shown to be in possession of the 'Gair Mumkin godaams'. On this point his

testimony could not be shaken in cross-examination. DW. Harjinder Singh clerk of the defendant Corporation stated that he did not know if the godowns were recorded in the revenue record as owned by the Central Government. During examination-in-chief, he did not even say if the plaintiff Corporation is the owner of the godowns. DW Harbans Singh stated that the property in dispute is not owned by the Central Government. He did not say who is the owner. In cross-examination he admitted that in a similar suit regarding payment of house-tax he had deposed in the court of Sh. U.S. Gera, that the godowns (belonged to) Central Government. He also admitted having stated in that suit that letter Mark 'A' was correct though he added that he had stated so in confusion. Again he did not say in the present proceedings if this part of his admission in the other suit was wrong or that letter Mark 'A' (dated 15.1.1977) was incorrect. Considering his admission, I think the said letter can be taken into consideration as a piece of evidence. The said letter issued by the Government of India, Ministry of Agriculture and Irrigation, Department of Food states that ownership of Central godowns, the physical possession of which had been transferred to the Food Corporation of India in respect of the godowns listed in the letter dated 24.11.1976 of the plaintiff corporation still vested in the President of India and as such no property taxes were payable for these properties in accordance with Article 285 of the Constitution of India. It is not disputed that the godowns in question are included in the list sent with the plaintiff Corporation letter dated 24.11.1976.

12. In the totality of circumstances, it appears that the ownership of the godowns vests in the Central Government. It follows that the plaintiff is entitled to the refund of house-tax erroneously paid."

The lower appellate Court reversed the above finding in the following manner:-

"8. The lower Court has observed that the Central Storage Godowns situated at Bhagtanwala, Amritsar are owned by the Central Government and as such are exempted from house tax. The learned Law Officer of the appellant assailing the finding of the lower Court, in this respect, has contended that there is no evidence on the file to show that these Central Storage Godowns are owned by the Central Government and so the finding of the lower Court, based on conjectures, cannot be maintained. The contention of the learned Law Officer is not without merit. In photocopy of Jamabandi Ex.P.1, for the year 1985-86, Central Government is shown to be in possession of the property is tenant. The existence of some godowns is shown therein. Similarly, Central Government is shown to be in possession of godowns in photocopy of Khasra Girdawari Ex.P.2. These documents do not show that the said godowns are owned by Central Government. Central Government is simply shown in possession. As per version of the respondent/plaintiff, the Central storage godowns are situated at Bhagtanwala, Amritsar but these godowns, as per this record, are situated in Amritsar Urban. In the column of ownership, some other persons are shown to be the owners of the property."

Learned counsel for the plaintiff-appellant submitted that the following substantial questions of law arise for consideration of the appeal:-

I. Whether letter of the Government of India dated 15.01.1977 Mark 'A' could be ignored when plaintiff itself admitted title of Government of India and there was nothing to show that the title vested in the plaintiff?

II. Whether the judgment of Kerala High Court in ***Food Corporation of India, Alleppey*** *v.* ***Alleppey Municipality and other*** AIR 1996 Kerala 241 recorded a finding that most of the buildings under possession of FCI were owned by the Government of India and have been given to FCI only for carrying out their business?

The lower Appellate Court observed that the Jamabandi and revenue records showed the possession of the property in question to be of the Central Government, but it did not mean that the title was vested in the Central Government, submitted the learned counsel for the plaintiff. The observation that the Central Government was the tenant and not the owner when nobody else was shown as landlord to whom the rent was payable or was ever paid, was not tenable. Further, the land had been duly acquired for the Central Government under the provisions of Land Acquisition Act vide notification dated 04.11.1961 (Annexure P-1 in the writ petition) for which award dated 29.10.1962 (Annexure P-2) was made. The notification and award as well as letter regarding construction of godowns and

regarding transfer of godowns to FCI have also been filed in the R.S.A. as Annexure A-1 to Annexure A-5 with an application for additional evidence. The said documents represent the government record. The contents of applications or the documents attached have not been controverted by the respondents by filing reply to the application. We, therefore, allow the application and the documents are marked as Exh. 'X' and 'Y'.

In view of the documentary record, the finding of the trial Court that the property was vested in the Central Government and had been handed over to FCI, could not be set aside by the lower appellate Court. The questions are thus liable to be answered in favour of the plaintiff and the appeal is liable to be allowed. We, accordingly, allow the appeal, set aside the decree of the lower appellate Court and restore that of the trial Court.

In the writ petition, the prayer is for quashing notice of demand of house tax dated 10.07.2000 (Annexure P-8) and the order of the appellate authority dated 28.05.2001 (Annexure P-10).

In view of our decision in the appeal, the writ petition has to be allowed and notice of demand and appellate order have to be set aside. House tax collected from the petitioner is liable to be refunded within three months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed.

(ADARSH KUMAR GOEL)
JUDGE

NOVEMBER 22, 2006
ashwani

(RAJESH BINDAL)
JUDGE